

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Biennial Regulatory Review – Amendment of)
Parts 0, 1, 13, 22, 24, 26, 27, 80,)
87, 90, 95, 97, and 101 of the Commission's Rules))
to Facilitate the Development and Use of the)
Universal Licensing System in the Wireless)
Telecommunications Services)

WT Docket 98-20

To: The Commission

REPLY COMMENTS

Small Business in Telecommunications (SBT) by its attorneys, respectfully submits the following Reply Comments in response to the Federal Communications Commission's Notice of Proposed Rulemaking. SBT is a nationwide, non-profit association of small businesses operating within the telecommunications marketplace. Its members' concerns are directed at reducing barriers to market entry for small businesses and assuring a level playing field before the Commission, which field is not disturbed by the requirement that each of SBT's members acquire and master the hardware and software necessary to participate in the proposed ULS.

Throughout this proceeding, SBT has noted that the Commission's proposals raise serious issues regarding whether mandatory implementation of the ULS would impede or deny constitutionally guaranteed access to government and its processes. That a technologically superior distribution system might be created for bread is interesting,

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however, a \$3,000 per consumer price tag would be too high. The agency should, therefore, consider carefully the consequences of its proposals and whether in its efforts to update its distribution system of licenses, the Commission may have replaced bread with cake, outside the grasp of many.

Implementation of the Universal Filing System

SBT notes that most commenting parties expressed that the Commission's January 1, 1999, deadline for mandatory electronic filing is too ambitious to be practical. SBT agrees, but further posits that electronic filing should never be made mandatory. Electronic filing might be encouraged and promoted by the Commission and its staff, but once mandatory, the ULS will become a hurdle for new entrants who have neither the resources nor the expertise to make even the simplest filings.

The logic of Commission's proposals is weakened by an unstated, but obvious presumption -- that persons participating in the Commission's licensing process have both the wherewithal and the expertise to participate in ULS. Yet, the Commission need look no further than the smallest communities of the United States, with populations of under 500 persons, to find a core constituency that would be excluded by adoption of the proposals. These, often rural, communities are entitled to equal access to government and that access would be denied in instances where the community does not have the resources to purchase the hardware necessary to participate in the proposed activities. A small town in Nebraska would be precluded from filing applications for fire, police

or ambulance services. That town would be unable to file petitions and comments, its voice permanently silenced, not because its comments are not relevant and important, but because the town's budget does not include expenditures for the appropriate computer hardware.

Similarly, a very small start up company would be required to divert assets from construction of telecommunications facilities, to begin the job of providing service to the public, so that the start up could afford to purchase computer hardware to file a single application with the Commission. In sum, the agency is stating that its enchantment with administrative efficiency outweighs the individual's right to participate in government. This is simply untrue. It is also a paradox that some of the Commissioners addressing this issue within the open meeting that adopted the proposals stated that applicants would, by adoption of the ULS, be freed from future payments to law firms which now prepare applications. SBT knows of no law firm which charges \$3,000 to file a single application for operation of a PCP system, or a single community repeater, or a Business Radio Service system with only a base and five mobile units. Yet, this is the price tag that the agency would impose, with the cost going to IBM, Compac, and Apple.

That the agency is further proposing to use ULS for the filing of comments and petitions goes beyond the pale in denying access to government for all but the members of the technocracy. Does the Commission believe that comments from individual citizens, small telephone customers, amateur radio operators, television viewers,

consumers of cable television, and other widely dispersed groups are irrelevant or unworthy of consideration? Has the constitutionally guaranteed right to petition government for redress earned a footnote, requiring that exercise of this right requires ownership of computer hardware?

SBT urges the Commission to pull back from its headstrong efforts in an effort to reflect on the whole of the public, not just the largest or wealthiest members. The American public, of which each and every member will be affected by adoption of the Commission's proposals, is neither willing nor able to engage the Commission via the InterNet or dial up circuits connected to modems. To declare in a sweeping gesture that each of these millions of persons has been effectively removed from the political process because they do not own a computer is tantamount to a law that states that only owners of real property shall have the right to vote. That idea was struck down long ago as unfair and unworkable. Our forefathers and the courts have long declared that evidence of property ownership is improper as a basis for participation in government. SBT, therefore, respectfully urges the Commission to view the entirety of its decision and the effects of adoption against the backdrop of fundamentally guaranteed freedoms and rights, and reject mandatory electronic filing.

Reinstitution of Filing Requirements on Microwave Licensees

Several commenters were concerned with the reinstitution of filing and paperwork requirements on microwave licensees, who were recently relieved of these requirements.

SBT supports these microwave licensees in their quest for a rational explanation of why the Commission has suddenly decided that these filings need to be reinstituted. All Commission licensees are entitled to a rational explanation for re-regulation.

Presumably, when the Commission removed the filing requirements, it determined that they were no longer necessary, for to do less would be arbitrary and capricious. Now, upon reinstating the rules, the Commission must explain what has changed to make these requirements necessary when just a few years ago, the agency made a determination that the requirements were not serving a useful purpose.

It may be that the agency has changed its mind about the value of these filings. Certainly the agency should be flexible in its approach to regulation, even flexible enough to recognize past error for present correction. SBT has long urged the Commission to be more diligent in recognizing that programs, regulation and policies which are obviously flawed or which have simply failed should be amended or abandoned without regard to the public relations consequences. Even when the Commission's past efforts at deregulation are found to have been in error, the agency should evidence the political will to re-regulate areas which are deemed worthy of more stringent oversight. However, SBT must join those complaining commenters in respectfully requesting a thorough explanation for its proposal. Licensees of microwave facilities, including SBT members, are fully entitled to a detailed explanation of the agency's reasoning and the

interest to be served in requiring again this information. Only then will the public be properly positioned to assess and make comment on this effort.

Filing Fees

A great number of commenters were concerned that the Commission, in implementing ULS, would either raise filing fees to establish uniformity among services, or institute new filing fees for actions for which no fee presently exists. Obviously, SBT is quite concerned that the ULS would be employed to raise the costs of market entry for small business, or increase the cost of expanding its members' services. Again, the agency is looking more toward its bottom line than the continued viability of small businesses to enter and succeed in the market.

SBT strongly opposes increases in fees which are justified by the agency's adoption of the ULS, a system which is not equally beneficial among large and small operators; and which is primarily encouraged by a desire to gain administrative efficiencies for the agency, rather than for small regulatees. In its effort to identify barriers to market entry for small business within its Notice of Inquiry to fulfill its obligations under 47 U.S.C. §257, the agency determined that there was not one cost that stood in the way of new entrepreneurs. Instead, it was a host of large and small costs and regulatory barriers that combined to deprive entry. Each time the agency raises fees, it has an adverse effect on small business. Although such increases might be justified if the net result is a benefit to the operator, the raising of fees via

implementation of the ULS is not likely to provide any such benefit to small business. SBT, therefore, urges the Commission to restrain itself in this instance and not employ the ULS for the purpose of justifying higher taxation and fees on operators.

Automatic License Cancellation

SBT supports those commenters that oppose automatic license cancellation. Automatic cancellation, or the death penalty, will not serve the Commission's intended purposes, since licensees will continue to inadvertently permit licenses to expire, for a myriad of reasons. To expect licensees to be perfect in administering their filings is too high a standard. Indeed, it is a standard which the Commission cannot, itself, attain.

Nor will the agency be able to discourage the filing of petitions, motions and the like to revive an automatically cancelled station. Anxious licensees will attempt to regain the authorization in which the licensee has invested thousands of dollars in construction and operation. The irony is, of course, that the filing of these petitions has no home on the agency's proposed ULS since the call sign will have been deleted and, in accord with the Commission's proposal, the petitions are to be filed with the station file which is to be presumably purged.

If the Commission intends to encourage licensees to pay closer attention to the paperwork aspect of their businesses, a notification prior to the end of their construction or license period will assist in achieving this goal, and the Commission has long had a

program in place to notify licensees of the expiration of their private radio licenses. Yet the Commission continues to warn licensees not to rely on the Commission's notification process. By its own admission, therefore, the agency has declared that its systems are flawed in assuring that regular notification of expiration will be presented to a licensee. It is inappropriate, therefore, for the Commission to assume that licensees can be wholly successful in meeting a standard that is beyond the capacity of the agency. SBT requests that the public be afforded the same standard as the agency imposes on itself, a good faith effort designed to meet its required needs.

Relatedly, SBT does not support PageNet's proposal that geographic licensees be permitted to begin operating on "abandoned channels" after a good faith determination of non-operation. PageNet would place itself and other geographic licensees in the position of the Commission, with PageNet deciding the parameters of its own authorization to the detriment of affected, site based licensees. The agency is not empowered to delegate its licensing authority, including that contained at 47 U.S.C. §151, to licensees based on the size of the licensee's coverage area. If PageNet has an argument to make before the Commission regarding the non-operation of a cochannel facility, the Commission's processes are amply designed to accommodate PageNet without allowing PageNet to usurp the licensing authority and responsibility of the agency.

E-Mail

Almost universally, commenters expressed discomfort with e-mail as a method of replacing mailed notifications to licensees. SBT agrees with those commenters who supported a system of employing e-mail only in conjunction with regular mail notifications and only when e-mail has been requested for use by the licensee. Again, the Commission has focused solely on its resources, rather than those of the American public.

SBT would ask that the Commission take a hard look at its operations, including the software, hardware, training, and personnel time required to construct, manage and maintain its computer network. After taking this hard look, SBT suggests that the agency deduct from all of these resources those investments which are beyond the economic capacity of a mayor of a town of 100 persons, remembering that the mayor probably serves in a part-time capacity out of her home. Any requirement that deprives that mayor from participating in the agency's processes or which would impede the receipt of information from the agency, is likely improper.

GMRS Operators

SBT is concerned about the outcry of GMRS operators who feel that this Rule Making is designed to convert GMRS into a CB like band. SBT supports these commenters who oppose the Commission's GMRS proposal. Indeed, SBT feels that the technical changes contemplated for the GMRS rules are far enough removed from the

purpose of universal licensing to warrant an entirely separate rule making where a free discourse of the merits of the proposal might be heard. The issues before the Commission within this proceeding should be limited to those which are directly related to the institution and use of the ULS, not the regulation of spectrum uses in the future. To muddy the waters unnecessarily is an invitation to inadvertently disjointed comments and proposals that do not provide proper focus in the primary area of concern.

Miscellaneous Concerns

SBT is pleased that the Commission has received numerous comments within this proceeding. The issues raised in the proposal of the ULS are important for purposes as broad as assuring access to government, and as narrow as appropriate telephone charges. To assure that SBT provides the Commission with a full breadth of its opinion, the following is expressed regarding some of the comments received:

- SBT reiterates its concern with ULS and the PPP dialer. SBT agrees that the Internet would be a good vehicle for ULS and that use of other systems would only impede the universal use that the agency is attempting to achieve. If the ULS is to become the dominant form of interacting with the Commission, absent mandatory use, the Commission must invite use through ease of access.
- SBT agrees that the Commission needs to rethink how ULS will work with transfer and assignment notifications. This issue continues to befuddle

commenters and some explanation is necessary to assure affected persons that the ULS has not been created without taking into consideration this important function.

- SBT agrees that the Commission needs to devise a plan for how to treat entities that are eligible for licensing under its rules, but do not yet have, or are not required to obtain a TIN. The Commission's reliance on TINs is still suspect and should be reexamined. The Commission's proposed processes do not accommodate the collection of TINs by all persons with standing or eligibility to participate in the agency's processes. If, as SBT suspects, the threshold requirement of TIN collection is a basic element of public participation in the agency's processes, then the Commission's reliance on TINs is misplaced as a singular vehicle for participant identification.
- SBT supports those commenters who have expressed concern about the Commission and others obtaining information about applications drafted, but not formally filed on the ULS system. To date, it appears that the Commission has exhibited only a "trust me" attitude about the security and back up of the ULS system. SBT avers that something more is needed to encourage future use.
- SBT agrees that the Commission needs to devise a plan, now, on the proper treatment of requests for confidentiality. Requests for confidentiality are reflective

of the public's concern with the making of a public request via a document containing proprietary information. That the document might be available to millions of persons, including competitors, via an electronic loophole is a grave concern for inventors, publicly traded companies, and a person simply wishing to keep secret its business information. The Commission should address this concern directly and assure regulatees that their private affairs will remain private.

- SBT shares the concern of commenters regarding the filing of maps and the necessity for applicants to own and operate scanners to assist them in filing applications with maps. Although the filing of maps was somewhat rare prior to the adoption of the cellular application rules, the use of maps has increased with each year to accommodate the agency's movement toward geographic licensing. The problems associated with the production of maps are exacerbated by the proposed ULS which does not seem to reflect the enormous inclusion of data required or the equipment necessary to accomplish this requirement. Indeed, ULS also does not seem to recognize the effect of digitizing photographs which are often employed by petitioners as exhibits. Although the Commission has glossed over this problem with a few chosen words, the practical nature of the problem continues to haunt the proceeding and should be resolved at the outset.

- SBT is extremely concerned that the Commission fix the discrepancy between major and minor modifications in the cellular and paging services versus the microwave services. Since most of the agency's recent efforts have been to standardize its approach to licensing, the Commission apparent advocacy of different treatment among these licensees is quite odd and should be explained.
- SBT feels that returned applications should be afforded 60 days for correction and resubmission. It frequently takes that long for corrected information to be found, sent to the coordinator and then to the Commission. The Commission should recognize that although an inquiry may travel with tremendous speed to the applicant, the answers to the inquiry may not be gathered as quickly. And the processes necessary to respond to the inquiry via the coordinating committees may involve human interaction of a slower variety.
- SBT agrees that, should the Commission adopt the NAD 83 standard, it should grandfather current sites which would be rendered impermissibly short-spaced. Although movement toward the singular standard of NAD 83 must be encouraged to assist both the agency and licensees in expressing location with a common yardstick, the standardization should not be performed in a manner which eliminates previously granted rights.

- SBT joins the outcry of private users who do not wish the Commission to begin collecting ownership information about them. The Commission has not justified this information collection with anything other than the vague statement (threat) that these licensees might become licensees of auctioned spectrum in the future. If and when that eventuality occurs, the Commission might be justified in undertaking some sort of information collection, but such collection would be at the invitation of the affected licensees who seek spectrum via auction and any benefits which might inure to a participant seeking treatment as a designated entity under 47 U.S.C. §309(j).
- SBT agrees that ULS needs to be modified to inform the Commission immediately of a request for Special Temporary Authority. The request for and issuance of STAs can have a substantive effect on the licensing of spectrum. To create delay in recording requests and issuances merely leaves blind all affected persons.
- SBT supports those commenters who believe that a transfer of control is sufficiently similar to an assignment of authorization as to warrant the consolidation of those forms into one form. SBT further supports combining lock boxes for the filing of fees.

- SBT fervently disagrees with SBC regarding the Commission's hardware and software standards. The adoption of standards should be employed for the purpose of inviting participation and access, not denying same via an economic yardstick. SBC's comments reflect a high-handed attitude with little concern for entities that do not produce multi-billion dollar bottom lines and should be rejected as inconsistent with the agency's duty to observe and reduce the adverse economic impact of its regulations on small business.
- SBT agrees that the Commission should drop its microfiche requirement and paper copy requirement if it determines that multiple paper copies are unnecessary. As the cost of microfiching documents has continued to rise, the impact is being felt on small businesses. If the agency has determined that single copies are appropriate, the effect should be an elimination of outdated filing requirements.

Conclusion

Small Business in Telecommunications hereby reiterates that it is not opposed to the Commission's Universal Licensing System, but is opposed to the Commission mandating its use. There is more at stake within this proceeding than cyber-efficiency and the promises of Microsoft, IBM, and American Online. There is the ability of each individual to petition the government for redress, request benefits available to the citizens of the United States, and to assure that the concerns of each member of the American public remain relevant in the agency's decision making processes in the future.

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SMALL BUSINESS IN TELECOMMUNICATIONS

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Dated: June 8, 1998

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